

200644029

# Internal Revenue Service

Uniform Issue List: 408.03-00

AUG - 7 2006

SET:EP:RA:T3

## Legend:

IRA X =

Company X =

Company M =

Individual M =

Company N =

Individual N =

Amount A = \$

Dear :

This is in response to correspondence dated May 12, 2006, as supplemented by correspondence dated July 20, 2006 and August 1, 2006, and a telephone discussion on July 28, 2006, in which your authorized representative requested on your behalf a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the Code).

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

You are a 74 year old retired widow who was previously employed as a secretary for over thirty years. You first entered a business relationship with Company M and Individual M, the owner of Company M, in 1996. Your son had died and you received money from his life insurance policy. You sought Company M's advice regarding the best way to invest these insurance proceeds. Company M sold you an annuity with the proceeds of the life insurance policy.

In 1996, Company M also advised you to purchase another annuity, IRA X, through Company X. Although IRA X was an Individual Retirement Annuity (IRA), you did not

know this. You did not realize that this annuity was purchased with funds that were rolled over from another IRA that you had maintained with another life insurance company. You never saw the IRA X annuity contract. You never received the annual Internal Revenue Service Form 5498, IRA Contribution Information, or any other statement indicating that the Company X annuity was held in an IRA.

You relied on Company M and Individual M to manage both annuities to your benefit. In 2005, Individual M recommended that you establish an agency account with a bank to assist you with investments and financial matters. In May 2005, you met with Individual N, Senior Vice President of Company N, regarding your investments and financial affairs. Specifically, your meeting concerned the opening of an agency account with Company N. At this meeting, you were accompanied by Individual M. Individual M recommended that you establish an agency account with Company N to assist you with investments and financial matters. At the meeting, you decided that Company N should manage your assets, including funds you would receive from the liquidation of your two annuities which you had purchased from Company M. At no time during the meeting or subsequent to that meeting did Individual M inform you or Individual N that a portion of your assets, one of the annuities, was held in an IRA.

At the meeting, you told Individual N that you purchased the IRA X annuity through Company X with life insurance proceeds that you received as a result of your son's death. In fact, you purchased the other annuity with life insurance proceeds you received from your son's death.

Subsequent to this meeting, you established an agency account with Company N. On June 3, 2005, you sent a letter to Individual M instructing him to liquidate the two annuities and transfer the funds to your agency account with Company N. On June 8, 2005 a representative of Company M sent instructions to Company X to transfer the funds from the liquidation of IRA X to Company N.

On June 21, 2005, Company X liquidated the annuity and forwarded a check of Amount A to Individual M for your benefit. Subsequently, Individual M delivered the check to Company N and Company N deposited the funds into your agency account on July 5, 2005. Company X and Company M never notified you that this was a taxable event, nor did they advise you of the 60-day rollover requirement. In addition, the check representing the liquidated funds from IRA X did not indicate that the funds were from an IRA. Finally, Company X did not withhold any funds for the payment of taxes upon the liquidation of IRA X.

In 2006, Company X sent you a Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., which stated that Amount A, the entire amount of the liquidation of IRA X, was taxable. When you presented this information to your certified public accountant ("CPA"), you were notified you that you would incur an additional tax liability as a result of the liquidation of IRA X.

On March 24, 2006, you notified Company N that Amount A was a distribution from an IRA, IRA X. On March 29, 2006, Company N segregated Amount A into a "Segregated Individual Retirement Account" (Segregated Account) for your benefit. Said Segregated Account is not an IRA. The liquidated IRA X funds are currently being held in this account which is separate from your other investments. You have not withdrawn or

otherwise used any portion of Amount A other than to invest such funds with Company N for your benefit.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code in this instance.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if—

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the one-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA, which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under section 408(d)(3)(A) of the Code where failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001 are eligible for the waiver under section 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that, in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information you presented demonstrates that you relied on Company M and Individual M to assist you in tax, financial and investment matters. Upon the advice of Individual M, the owner of Company M, you liquidated your annuities and transferred all of your financial investments in these annuities to Company N. You did not realize that a portion of your investments was held in an IRA, IRA X, and did not know that liquidating such an asset would give rise to taxable consequences. You were not informed by any representatives of either Company M or Company X that IRA X was an IRA, nor were you given any rollover forms by either entity which could have prevented taxation of the IRA X distribution. Because Individual M did not relay the relevant information to Company N, Amount A, distributed from IRA X, was placed in a non-IRA account. Due to the lack of information from Company M and Company X regarding the nature of IRA X, you were not aware that Amount A had not been placed into another IRA until your CPA informed you by which time the applicable 60-day rollover period had expired.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount A (less amounts described below). You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount A (less amounts described below) into a Rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, Amount A will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

In accordance with section 408(d)(3)(E) of the Code, this ruling does not authorize the rollover of amounts that were required to be distributed by section 401(a)(9) of the Code, made applicable to an IRA pursuant to Code section 408(a)(6) with respect to the 2005 and 2006 calendar years.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter expresses no opinion as to whether the IRA described herein satisfied the requirements of section 408 of the Code.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative. If you wish to inquire about this ruling, please contact \_\_\_\_\_ at \_\_\_\_\_. Please address all correspondence to \_\_\_\_\_.

Sincerely yours,

  
\_\_\_\_\_, Manager  
Employee Plans Technical Group

Enclosures:

Deleted copy of ruling letter

Notice of Intention to Disclose